

Town of Odessa

MINUTES OF THE REGULAR COUNCIL MEETING

January 3, 2005

Prior to the call to order of the Regular Meeting of Mayor and Council, Lieutenant Bailey of the Delaware State Police was asked to give a brief report to the community:

Lieutenant Bailey reported to the community that on December 23, 2004 a local resident reported a theft at Ronnie's Auto Sales. The Lieutenant reminded all residents to lock all sheds and out buildings.

Delaware State Police Troop 9 is asking for volunteers with good keying skills to assist at the Troop office with various administrative functions. Please contact the Troop for more information.

The Regular Meeting of Mayor and Council for the Town of Odessa was called to order at 7:00 p.m. by Mayor Rebecca Tulloch.

The following Council members were present: William Allen, Jim Grant, John Raudenbush, Frank Sims, Rebecca Tulloch, and Jerry Unruh. Also present were Roger Akin, Town Solicitor and Cheryl Gerkens, Town Secretary

A listing of all public in attendance is attached as documentation herewith. Prior to the start of the business meeting, Mayor Tulloch recognized Councilman Raudenbush to read correspondence from Representative Cathcart with regard to mediation services being offered to the Town. (See attached)

The Mayor asked Representative Cathcart if he would like to make any comments.

Representative Cathcart briefly stated his concern over the infighting occurring within the Town, which is crippling forward movement.

In his concern over the Town, Representative Cathcart investigated mediation services. Mr. Robert J. Valihura, Jr., an attorney, trained mediator and State Representative who handles issues arising within the State Legislature, has offered to perform mediation services to the Town of Odessa on a pro-bono basis.

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Mayor Tulloch recognized Town Solicitor, Roger Akin, to explain the difference between Arbitration and Mediation. The following are the explained definitions for each:

- Arbitration - Neutral third party (outside of court) decides outcome of a dispute.
- Mediation - Neutral third party (outside of court) attempts to facilitate settlement through compromise (in writing).

The Mayor asked for comments and questions from Council.

Councilman Sims thanked Representative Cathcart for his intervention and stated that he agrees with the need for mediation services.

Councilman Raudenbush stated that he thinks we should pursue this action as soon as possible.

Councilman Allen stated that personally he does not believe that we need a mediator. He sees that there are issues, but none that would require a mediator.

Mayor Tulloch stated asked Representative Cathcart if his proposal of mediation was to include both Council and the public.

In response, Representative Cathcart stated that from his viewpoint there is a dispute among Council, which has been obvious for the last several months. His thought process would be to include Council as well as the community.

Councilman Unruh made a motion that the Town of Odessa accept Representative Cathcart's offer of a mediator, pro bono, as soon as possible. Motion seconded by Councilman Raudenbush.

Solicitor Akin stated that in order to assist Mr. Valihura, the parties to the dispute as well as the issues should be identified.

Councilman Unruh amended his motion that the Town of Odessa accept Representative Cathcart's offer of a mediator, pro bono as soon as possible to include Mayor, Council and any interested citizens of the Town be included in the mediation process. Motion seconded by Councilman Raudenbush.

The Mayor asked for comments from the public and recognized Anthony Manista.

Mr. Manista volunteered to be a part of the mediation process followed by Mrs. Fox, who stated that she felt that the mediation was extremely important for the Town.

Ms. Fahey also stated that she would like to be a part of the mediation process followed by Ms. Williams, Mrs. Harvey, Mrs. Bedzyk and Mr. Grant, who stated that he would attend as a private citizen, not a member of Council.

The Mayor stated that a listing of all who plan to participate in the mediation process will be forwarded to Mr. Valihura.

Mayor Tulloch called for a vote with regard to Councilman Unruh's motion, which had previously been seconded by Councilman Raudenbush. **All voted in favor.**

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Mayor Tulloch and Councilman Unruh thanked Representative Cathcart for his intervention.

The Mayor recognized Mr. Manista, who had asked to address Council on several issues as follows:

- Tax Issue - Karen Fahey, Castle Day Care - Mr. Manista stated that at the September Meeting of Mayor and Council, he asked for an explanation as to why Mrs. Fahey of Castle Day Care has been paying taxes at the commercial rate for the past 10 years when the Bed and Breakfast has been paying taxes at the residential rate.

At the October Meeting of Mayor and Council, Mr. Manista continued, an explanation was provided by Solicitor Akin as to Town Ordinance 88-3. This did not address my issue, Manista stated.

At the November Meeting of Mayor and Council, the Mayor wanted to change Ordinance 88-3, which still did not address my issue.

Continuing, Mr. Manista stated that to date this issue has never been a part of any agenda, which he feels is deliberate and is now asking, in writing, to have this issue addressed at a public meeting of Mayor and Council.

- Castle Day Care Tax Refund Issue - Request for Appeal - (see attached letter) Mr. Manista requested and appeal to the letter from Mayor Tulloch accusing her (the Mayor) of rendering a decision solely and without Council involvement, public discussion and vote.
- Unfinished Business - Mr. Manista stated his concern that a motion was made to carry forward all unfinished business on the Agenda until completed.

Mayor Tulloch thanked Mr. Manista.

The business meeting began with the approval of Minutes from the following meeting:

- December 6, 2004 - Regular Meeting of Mayor and Council - Following a request from the Mayor for comments from Council, a motion to approve was made by Councilman Allen; seconded by Councilman Raudenbush to accept the Minutes with amendments as follows: correction made to pages 2 and 3 to strike Treasurer Grant as having a recorded vote. **All voted in favor.**

Mayor Tulloch requested that Council break for an Executive Session to discuss and obtain legal advice on the issues of Castle Day Care tax refund and the handling of the missing funds from the Parks Commission.

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Councilman Unruh interjected discussion by requesting of Solicitor Akin an explanation of why a facsimile sent to him regarding unfinished business remaining on the agenda went unanswered.

Solicitor Akin responded to Councilman Unruh stating that he had received the facsimile but after reviewing the agenda for the Executive Session had made a discretionary decision to not spend the Town's money drafting a lengthy letter when he could explain at a public meeting.

Councilman Raudenbush interjected his opinion that Solicitor Akin should have indeed responded to Councilman Unruh out of common courtesy.

A motion was made by Councilman Allen, seconded by Councilman Sims to adjourn to Executive Session. **Voting in favor were: Mayor Tulloch, Councilmen Allen and Sims. Voting against were: Councilmen Raudenbush and Unruh.**

Meeting was adjourned to Executive Session at 7:51 p.m.

A motion was made by Councilman Raudenbush to resume the Regular Meeting of Mayor and Council for January 3, 2005 at 8:41 p.m.; seconded by Councilman Sims. **All voted in favor.**

Executive Session Summary

Legal Advice - Parks Funds - Mayor Tulloch, stating the intent of Council to obtain legal advice on how best to proceed with the issue of the missing Parks funds, was determined to be a business decision and not a legal one as the cost of bringing suit would exceed the amount of money lost.

Property Tax Rate - Castle Day Care - The Mayor stated that the various attributes of Castle Day Care rendering it a commercial entity despite zoning as R-1 were discussed. Also discussed was the fact that zoning and tax classification are not the same.

Ms. Williams asked whether the issue of Bonding had ever come up.

Mayor Tulloch responded that the Treasurer is bonded.

The Mayor asked for Council discussion on the issue of the missing Parks funds.

Discussion - Parks Funds - Councilman Allen recommended that money be transferred into the Parks account to cover loss.

Mayor Tulloch stated that in September 2004 the Council approved to move monies into the Parks account to cover loss.

Councilman Sims stated that we have learned a lesson in this situation; one of which shall never be repeated, but that the cost of litigating the issue far outweighs the amount of money lost.

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Council Unruh stated that while he partially agrees with the statement made by Councilman Sims, he is a believer that when a crime is committed that it should be addressed and repercussions follow. However, not knowing the exact amount of money involved makes the issue difficult. Further, Councilman Unruh stated that he plans on abstaining when a vote is called.

While reiterating the lesson learned, Councilman Raudenbush stated his concern for a strict money management policy and the need for an apology to Parks Commission for not having a proper policy in place.

A motion was made by Councilman Raudenbush to not file suit in the case of the missing Parks funds; motion was seconded by Councilman Sims. A call by the Mayor for discussion from the floor was made.

Mrs. Fox was recognized by Mayor Tulloch.

Mrs. Fox stated that her purpose in this situation was to obtain an impartial investigation, with which she is very pleased. Mrs. Fox continued, stating that if money is transferred into the Parks fund that the monies should be less the monies expended for a storyteller from the last Halloween event. Mrs. Fox will discuss with Treasurer Grant the amount.

The Mayor recognized Mrs. Harvey who criticized Mayor and Council for not realizing the funds were missing in the first place. Mrs. Harvey continuing referred to a memo, which stated that Ms. McGregor was paying bills and carrying out other functions of a financial nature under the supervision of the Treasurer, which during the investigation has been proven to be untrue.

Mrs. Harvey made a recommendation that all bills be paid at the regular monthly meetings of Mayor and Council.

Mayor Tulloch recognized Mr. Manista who echoed Mrs. Harvey's feelings, but further stated that he did not feel that this loss should fall on the shoulders of the taxpayers of the Town, but on those responsible.

There was some further discussion from the floor with regard to collecting funds.

Solicitor Akin, after being asked by Councilman Raudenbush if any of the discussed solutions would be feasible for the Town, informed the community that because the Town is a separate entity, recognized legally by the State of Delaware, the Supreme Court rules that an attorney must be retained.

Councilman Unruh suggested that the motion on the floor made by Councilman Raudenbush to not file suit in the case of the missing Parks funds, which was seconded by Councilman Sims, be withdrawn and tabled until next month to investigate options available to the Town through JP Court with regard to recovery of funds. Councilman Unruh also stated that a certified letter should be sent to Ms. McGregor requesting that she pay back the missing funds.

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The Mayor called for a vote on the original motion made by Councilman Raudenbush to not file suit in the case of the missing Parks funds, which was seconded by Councilman Sims. The results are as follows: **Mayor Tulloch and Councilmen Allen and Sims voted in favor, Councilmen Raudenbush and Unruh abstained. There were no "no" votes.**

Discussion - Property Tax Rate - Castle Day Care - Councilman Raudenbush, after being recognized by Mayor Tulloch, stated that he definitely felt this item should be tabled until further investigation could be obtained as to how other counties and municipalities handle such matters before jumping into this one.

Councilman Sims reiterating the feelings of Councilman Raudenbush, stated that he believed that Castle Day Care should be treated as commercial with regard to tax rate due to the number of children served and the fact that Mrs. Fahey does not reside there.

Councilman Allen stated that he could not accept Castle Day Care as a home occupation because the person operating the facility does not live there. Therefore, his feelings are that Castle Day Care should be taxed at the commercial rate.

Councilman Unruh suggested that Council contact the State and the County regarding daycare centers to investigate this issue thoroughly.

Although the consensus of Mayor and Council was that Castle Day Care should be treated as commercial with regard to tax rate, Mayor Tulloch asked Councilman Raudenbush if he cared to make a motion.

Councilman Raudenbush responded by making a motion that they vote to table the issue until more information can be obtained from the County regarding similar issues and how they are handled, at the next meeting of Mayor and Council; seconded by Councilman Unruh.

The Mayor called for discussion from the floor.

After being recognized by Mayor Tulloch, Mrs. Fahey stated that she would be fine paying at the commercial rate. Mrs. Fahey continued by stating that she had requested to be re-zoned to commercial, but that Council had not voted on that issue citing a 45 day time limit.

Mayor Tulloch, in response to Mrs. Fahey, informed the community that this was an issue that would be addressed through the Comprehensive Plan. Mrs. Fahey, Mr. Manista and the George Reed House properties, the Mayor stated, were not included in the Comprehensive Plan initially. These properties in order to be re-zoned will need to be added after the draft of the Comprehensive Plan is heard and voted on by Council. None of the properties mentioned can be re-zoned until after this planning process is completed.

The Mayor recognized Mrs. Harvey, who criticized Mayor and Council for not addressing the issue of a refund to Mrs. Fahey citing that for 10 years she has been paying the commercial rate while operating within the residential zone even though she has been told that she is considered conforming.

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The Mayor asked for a vote with regard to the motion on the floor, made by Councilman Raudenbush that this issue be tabled until more information can be obtained prior to the next meeting of Mayor and Council, which was seconded by Councilman Unruh. The Mayor requested to include in this motion the tabling of the Usage Request at 610 Main Street; the motion as amended, was made by Councilman Sims; seconded by Councilman Allen. **All voted in favor.**

Powers of the Mayor - Solicitor Akin was asked by the Mayor to give an explanation as to the Powers of the Mayor. Solicitor Akin cited Section 7.2 of the Town Charter which gives signing rights to the Mayor for all leases, bonds etc. as well as the authority to enforce all ordinances and resolutions of the Town.

Further stated, each enforcement action does not require going to Council for each instance.

Councilman Unruh cited Section 14.1 of the Town Charter with regard to the sidewalk work not going to referendum and the payment of invoices without authorization of Council.

Solicitor Akin, referring to his letter to Mayor and Council regarding "*Capital Expenditures vs. Capital Improvements*" responded to Councilman Unruh by stating that while the Town did expend funds for the sidewalk work, this money was expended on a temporary basis and will be reimbursed to the Town by the State dollar for dollar.

A word volley commenced between Councilman Unruh and Solicitor Akin with regard to the interpretation of wording.

Treasurer's Report - The Treasurer's report was read by Treasurer Grant.

Old Business

Policy for Collection of Money - The Mayor asked for discussion among Council members regarding rewritten policy for collecting monies. A determination was made that the Treasurer should be responsible to handle all monies collected and be responsible to maintain all records and receipts. A motion to accept the policy as amended was made by Councilman Raudenbush; seconded by Councilman Sims. **All voted in favor.**

Correspondence

- Gulf Station - The Mayor brought to the attention of the community that the fence has been repaired at the old Gulf station.
- Historic Commission letter with regard to zoning issues - Mayor Tulloch stated that this item will be addressed at the next regular meeting of Mayor and Council.
- Correspondence from Councilman Sims opening a complaint with the County regarding Middletown Well Drilling.

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Open Issues


- Jake Brake Signs
- Meeting with Engineer and others to reinforce roof of bell tower at Old Academy
- William's Complaint - Sidewalk overgrowth
- Sidewalk Project
- 610 Main Street - Usage
- One-way traffic - on hold until we can work with State Police.
- Boundary Issue - Address with State Planning

A motion to adjourn at 9:52 p.m. was made by Councilman Allen; seconded by Councilman Sims. **All voted in favor.**

Respectfully submitted,

Cheryl L. Gerkens

Cheryl Gerkens
Secretary


Rebecca Tulloch, Mayor

Date approved:

Date Protected: